IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3681 OF 2004

IN

SUIT NO.3569 OF 2004

...

Shobha A. Kudale ...Plaintiff

v/s.

Kishori S. Nehare ...Defendant

...

Mr.P.G. Karande for the Plaintiff.

Mr.M.G.Gawde for the Defendant.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 23RD DECEMBER,2005

**P.C.:**

1. Admittedly the Plaintiff was in possession of the room. The Plaintiff entered into an agreement to sell the tenancy rights to the Defendant for consideration of Rs.9 lakh. According to the Plaintiff, the Plaintiff has received an amount of Rs.3,80,000/- from the Defendant. Balance amount is not paid. The case of the Defendant is that the entire amount has been paid, some was paid by cheque and some was paid by cash. But the Defendant does not hold any receipt. The Defendant is not in a position to point out any document whereby the Defendant has obtained possession, either from the landlord or from the tenant. But the learned Counsel appearing for the Defendant states that the Defendant is willingness to deposit in this court an amount of Rs.5,20,000/-. In my opinion, in view of this statement made on behalf of the Defendant and the fact that admittedly the Plaintiff had agreed to transfer the tenancy for consideration of Rs.9,00,000/-, out of which she has admittedly received Rs.3,80,000/-, following order would meet the ends of justice.

O R D E R

(i) Motion is granted in terms of prayer clause

(ii) The Defendant, as per the statement made by the learned Counsel appearing for the Defendant, shall within a period of eight weeks from today deposit an amount of Rs.5,20,000/- in this court with due intimation to the Plaintiff.

(iii) On the amount being deposited, the Prothonotary and Sr.Master shall permit the Plaintiff to withdraw the amount on furnishing a bank guarantee of a nationalised bank and also on furnishing an undertaking to the court to redeposit the amount, if so directed by this Court and on such terms and conditions as may be directed by this Court.

(iv) Withdrawal shall be permitted within a period of eight weeks from the date of deposit. If the amount is not withdrawn within the aforesaid period, then the Prothonotary & Sr.Master shall invest the amount in fixed deposit in a nationalised bank during the pendency of the suit.

(v) In case the Defendant fails to deposit the amount within the aforesaid period, then this Notice of

Motion shall stand granted in terms of prayer clause (a). In that event the Receiver shall take physical possession of the property from the Defendant and on the Plaintiff depositing in this court an amount of Rs.3,80,000/- shall appoint the Plaintiff as his agent to be in possession of the premises on usual terms and conditions, but without security and royalty.

If the Plaintiff is not able to deposit the amount of Rs.3,80,000/-, then the Court Receiver shall appoint the Defendant to be his agent to be in possession of the premises on usual terms and conditions, but without security and royalty.

(vi) Notice of Motion disposed of.

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